

CREDIT CARDS, COLLECTIONS AND JUDGMENT ENFORCEMENT



PAY NOW, OR PAY LATER?

**An ounce of prevention is worth
a pound of cure**



CREDIT CARD ACCOUNTABILITY RESPONSIBILITY AND DISCLOSURE ACT OF 2009

Majority Effective February 22, 2010

– Credit Company Must Tell Customers:

- When they plan to increase rates or fees & provide 45 day notice
- They have an option to cancel before fee increase takes effect
- Company may close account and increase monthly payment
- 5 years to pay

DISCLOSURE ACT Continued



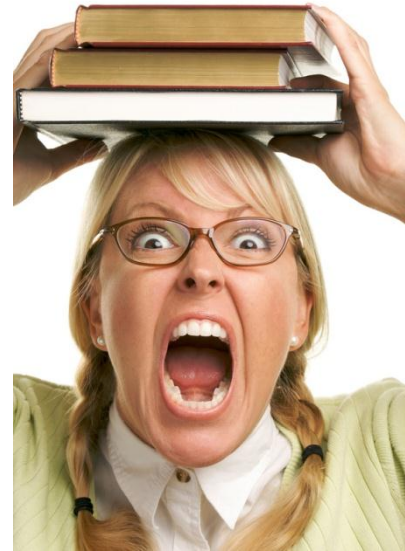
- No notice: Variable interest rate tied to index and index increases. Introductory rate expires. Workout agreement and have not made payments
- How long it will take to pay off balance.

DISCLOSURE ACT Continued

- **No interest rate increase for the first year. Except: tied to index, introductory rate, 60 days late or you have a workout agreement.**
- **Increased rate only apply to new charges.**
- **Restrictions on over the limit transactions.**
 - Inform credit company that you want to allow over limit, if you don't, you will be turned down.
 - If over limit not authorized and company allows you to go over, you cannot be charged over limit fees.
 - Opt in, only charged once per billing cycle.


DISCLOSURE ACT Continued

- **Caps on high fee cards. Fees (annual/application) cannot total more than 25% of the initial credit limit. Does not apply to penalty fees.**
- **Protection for underage consumers. Under 21, show that you are able to make payments, or you need a cosigner to open a credit card account.**



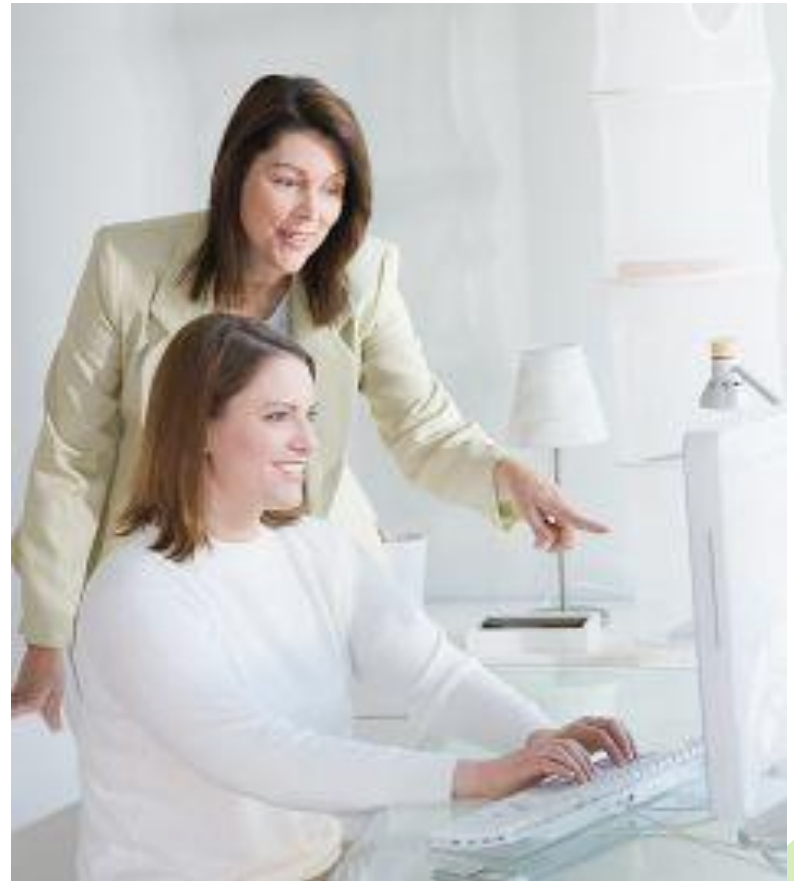
DISCLOSURE ACT Continued

Changes To Billing and Payments:

- Mail or deliver bill 21 days before payment is due.
 - Same date each month for due date.
 - Cut off cannot be before 5:00 p.m.
 - If cutoff falls on a weekend, it goes to the next business day.
 - Payments in excess of minimum directed to highest interest balances. Except for deferred interest plan.
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DISCLOSURE ACT Continued

- No two cycle billing.
Interest charges only on
balance current billing
cycle.
- Interested in more
information? Go to:
banking.senate.gov,
www.whitehouse.gov
or
federalreserve.gov.



COLLECTIONS

- **DEBTS**

- Secured
- Unsecured
- Consumer
- Commercial



- **FOCUS**

- Unsecured Consumer Debt

Federal Fair Debt Collection Practices Act (15 USC § 1692)

COMMUNICATIONS:

- **Not at inconvenient time or place**
 - An unusual time or place the collector knows, or should know, is inconvenient for consumer. From 9:00 p.m. to 8:00 a.m. is presumed inconvenient.
 - Sunday is not, unless collector knows.
 - No communication if consumer has attorney, but collector must know.
 - Cannot call work if collector knows, or should know, the employer prohibits employees from receiving such communications.
 - Cannot communicate with third parties.

FDCPA Continued

PROHIBITION ON HARASSMENT & ABUSE:

- Generally prohibits debt collectors from harassing, oppressing or abusing any person to collect a consumer debt.
- No threats or use of violence or criminal means.
- No obscene or abusive language.
- No publishing a deadbeat list
- No advertising a debt for sale



FDCPA Continued

TELEPHONE CALLS:

- May not continuously or repeatedly telephone (or ring) with the intent to annoy, harass or abuse.
- Must provide meaningful disclosure of identity.

FDCPA Continued

- **Cannot use any false, deceptive or misleading representations to collect debt or information about debtor.**
- **Cannot threaten unintended or unlawful action.**
- **Communicate in writing that you refuse to pay debt and want further communication to cease, you must be left alone.**

FDCPA Continued

- **Any person who violates may be sued for actual and/or statutory damages, costs and attorney's fees.**

FDCPA Continued

- **California has own statute, for comparisons with federal law see:**
http://www.dca.ca.gov/publications/legal_guides/dc_2.pdf

REPOSSESSION

- A secured creditor generally has the right to peacefully repossess the secured property.
- Cars - written notice must be provided to sell or dispose and give debtors the right to redeem the vehicle. Subject to a deficiency judgment. See Rees-Levering Motor Vehicle Sales & Finance Act, CA Civil Code § 2981.



JUDGMENTS

- **Judgment allows a party to use the power of the state to collect a debt**
- **How To Obtain A Judgment:**
 - Complaint - must be served
 - Defendant has 30 days to answer
 - Notice of Case Assignment will also be served, generally two dates OSC re Service and OSC re Status of Default Judgment

JUDGEMENTS

- **DO NOTHING:**

- A default can be entered against the defendant, which means he/she cannot contest the complaint
- The plaintiff can then seek a default judgment
- Generally there is no hearing, it is all paperwork submitted to the court
- Defendant is liable for the amount prayed for, interest, costs and potentially attorney's fees

JUDGEMENTS

- **Answer**
 - Generally deny or admit with exceptions
 - Assert affirmative defenses. Cannot afford to pay debt back is not a defense.
 - The debt may have been sold, answering that defendant did not borrow money from plaintiff may not be sufficient
- **If no denial or defenses, plaintiff may be entitled to a judgment on the pleadings.**

JUDGEMENTS

- **Plaintiff can file a motion for summary judgment**
- **Trial**
- **If decision of court or verdict is in favor of plaintiff, may obtain judgment for amount awarded plus interest. May include costs-filing fee, service of process fee and attorney's fees**

JUDGEMENTS

- **ENFORCEMENT:**

- Lien on real property
- Lien on personal property
- Writ of execution- property taken and sold to satisfy judgment or can be collected (checks, currency, notes, etc.)
- Wage garnishment- compel employer to withhold portion of pay to levying officer. 75% of debtor's earnings are automatically exempt

JUDGEMENTS

- **Exemptions From Judgments:**
 - Real property - homestead
 - Wage garnishment- request hearing before a judge to reduce or eliminate amount taken by levying officer
- **Best to speak to an attorney**

Service Member Civil Relief Act

50 USC § 501

- If a person is serving in the military, may be entitled to a temporary stay of proceedings.
- Contact JAG office to determine if eligible.



CONCLUSION

- **Ignorance is not bliss.**
- **Doing nothing does not mean that nothing will happen.**



ACKNOWLEDGEMENTS

- **California Practice Guide, Enforcing Judgments and Debts by Judge Alan M. Ahart and Barry S. Michaelson. Published by The Rutter Group.**
- **What The New Credit Card Law Means For You by Connie Prater. Creditcards.com**

